

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

(1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a "smart form" meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

[73 FR 58444, Oct. 7, 2008]

**§ 58.11 Procedures governing administrative review of a United States Trustee's decision to deny a Chapter 12 or Chapter 13 standing Trustee's claim of actual, necessary expenses.**

(a) The following definitions apply to this section. These terms shall have these meanings:

(1) The term *claim of actual, necessary expenses* means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee's approval of the trustee's projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and \$5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term *director* means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term *final decision* means the written determination issued by the Director based upon the review of the United States Trustee's decision to

deny all or part of a trustee's claim of actual, necessary expenses;

(4) The term *notice* means the written communication from the United States Trustee to a trustee that the trustee's claim of actual, necessary expenses has been denied in whole or in part;

(5) The term *request for review* means the written communication from a trustee to the Director seeking review of the United States Trustee's decision to deny, in whole or in part, the trustee's claim of actual, necessary expenses;

(6) The term *trustee* means an individual appointed by the United States Trustee under 28 U.S.C. 586(b) to serve as the standing trustee for chapter 12 or chapter 13 cases in a particular region; and

(7) The term *United States Trustee* means, alternatively:

(i) A United States Trustee appointed under 28 U.S.C. 581; or

(ii) A person acting as a United States Trustee under 28 U.S.C. 585.

(b) The United States Trustee may issue a decision to deny a trustee's claim of actual, necessary expenses. Reasons for denial include, but are not limited to, finding that the trustee failed to do any of the following:

(1) Provide to the United States Trustee sufficient justification for the expense;

(2) Demonstrate to the United States Trustee that the expense is a cost effective use of funds;

(3) Demonstrate to the United States Trustee that the expense is reasonably related to the duties of the trustee;

(4) Obtain authorization from the United States Trustee prior to making an expenditure that was not provided for in the current budget;

(5) Provide the United States Trustee with documents, materials, or other information pertaining to the expense;

(6) Timely submit to the United States Trustee accurate budgets or requests for amendment of budgets to cover the additional expense; or

(7) Demonstrate to the United States Trustee that the expense is directly related to office operations.

(c) Before issuing a notice of denial, the United States Trustee shall communicate in writing with the trustee in

## Department of Justice

## § 58.11

an attempt to resolve any dispute over a claim of actual, necessary expenses:

(1) For disputes involving the trustee's projected expenses for the upcoming fiscal year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than July 30 of the current calendar year for a chapter 12 standing trustee or October 31 of the current calendar year for a chapter 13 standing trustee, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information if such submission is after July 1 for a chapter 12 standing trustee or October 1 for a chapter 13 standing trustee, unless the trustee and United States Trustee agree to a longer period of time. Any projected expenses not specifically disputed shall be approved in the ordinary course and the trustee's fee shall be set on an interim basis;

(2) For disputes over amendments to the current year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than 30 calendar days after the trustee's amendment request, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information, unless the trustee and the United States Trustee agree to a longer period of time. Any portion of the amendment not specifically disputed shall be approved in the ordinary course;

(3) If the United States Trustee does not resolve the dispute or issue a notice of denial within the time frames identified in (c)(1) or (2) of this section, the trustee's claim of actual, necessary expenses shall be deemed denied on the next business day following expiration of the time frames identified in (c)(1) or (2) of this section.

(d) The United States Trustee shall notify a trustee in writing of any decision denying a trustee's claim of actual, necessary expenses. The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the decision. The United States Trustee shall provide to the trustee copies of any such non-privileged documents that were not supplied

to the United States Trustee by the trustee. The notice shall be sent to the trustee by overnight courier, for delivery the next business day.

(e) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director no later than 21 calendar days from the date of the notice to the trustee. If the United States Trustee did not issue a notice of denial, and the expenses were deemed denied under (c)(3) of this section, the trustee shall have 21 calendar days from the date on which the expenses were deemed denied to submit a request for review to the Director.

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the trustee or the date the expenses were deemed denied. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 21 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional non-privileged information from any

## § 58.15

## 28 CFR Ch. I (7–1–11 Edition)

party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 calendar days from submission of the additional information, unless the trustee agrees to a longer period of time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

[76 FR 31228, May 31, 2011]

### **§ 58.15 Qualifications for approval as a nonprofit budget and credit counseling agency.**

(a) *Definition of agency.* As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) *Qualifications.* To be included on the list of approved nonprofit budget and credit counseling agencies under 11

U.S.C. 111 an agency shall meet the qualifications set forth in paragraphs (d) through (i) of this section. An agency shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of an agency.

(d) *Structure and organization.* A nonprofit budget and credit counseling agency must:

(1) Be organized and operated as a nonprofit entity;

(2) Be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the agency conducts credit counseling services;

(3) Have an independent board of directors the majority of which:

(i) Are not employed by such agency; and

(ii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(4) Ensure that no member of the board of directors or trustees, officer, manager, employee, counselor, or agent is a United States Trustee Program employee, a panel or standing trustee, a Federal judge, a Federal court employee, a certified public accountant that performs audits of the agency's trust accounts, or a person with a financial or familial connection to the United States Trustee Program.

(5) Avoid any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group related or connected to the Agency.

(e) *Fees.* If a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; the agency's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, an agency shall: